

§ 401.15

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excess of 1 year) or intermittent services have been procured by SSA by contract pursuant to 5 U.S.C. 3109; volunteers where acceptance of their services are authorized by law; those individuals performing gratuitous services as permitted under conditions prescribed by the Office of Personnel Management; and, participants in work-study or training programs.

(b) *Other entities.* This part also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act which provide advice to: Any official or component of SSA; or the President and for which SSA has been delegated responsibility for providing services.

§ 401.15 Limitations on scope.

The regulations in this part do not—

(a) Make available to an individual records which are not retrieved by that individual's name or other personal identifier.

(b) Make available to the general public records which are retrieved by an individual's name or other personal identifier or make available to the general public records which would otherwise not be available to the general public under the Freedom of Information Act, 5 U.S.C. 552, and part 402 of this title.

(c) Govern the maintenance or disclosure of, notification about or access to, records in the possession of SSA which are subject to the regulations of another agency, such as personnel records which are part of a system of records administered by the Office of Personnel Management.

(d) Apply to grantees, including State and local governments or subdivisions thereof, administering federally funded programs.

(e) Make available records compiled by SSA in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, rules of discovery, and applicable regulations of the agency.

§ 401.20 Scope.

(a) *Access.* Sections 401.30 through 401.95, which set out SSA's rules for implementing the Privacy Act, apply to records retrieved by an individual's name or personal identifier subject to the Privacy Act. The rules in §§ 401.30 through 401.95 also apply to information developed by medical sources for the Social Security program and shall not be accessed except as permitted by this part.

(b) *Disclosure—(1) Program records.* Regulations that apply to the disclosure of information about an individual contained in SSA's program records are set out in §§ 401.100 through 401.200 of this part. These regulations also apply to the disclosure of other Federal program information which SSA maintains. That information includes:

(i) Health insurance records which SSA maintains for the Health Care Financing Administration's (HCFA) programs under title XVIII of the Social Security Act. We will disclose these records to HCFA. HCFA may redisclose these records under the regulations applying to records in HCFA's custody;

(ii) Black lung benefit records which SSA maintains for the administration of the Federal Coal Mine Health and Safety Act; (However, this information is not covered by section 1106 of the Social Security Act.) and

(iii) Information retained by medical sources pertaining to a consultative examination performed for the Social Security program shall not be disclosed except as permitted by this part.

(2) *Nonprogram records.* Section 401.110 sets out rules applicable to the disclosure of nonprogram records, e.g., SSA's administrative and personnel records.

[62 FR 4143, Jan. 29, 1997, as amended at 65 FR 16812, Mar. 30, 2000; 72 FR 20939, Apr. 27, 2007]

§ 401.25 Terms defined.

Access means making a record available to a subject individual.

Act means the Social Security Act.

Agency means the Social Security Administration.

Commissioner means the Commissioner of Social Security.

Disclosure means making a record about an individual available to or releasing it to another party.

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FOIA means the Freedom of Information Act.

Individual when used in connection with the Privacy Act or for disclosure of nonprogram records, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietors, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual. When used in connection with the rules governing program information, *individual* means a living natural person; this does not include corporations, partnerships, and unincorporated business or professional groups of two or more persons.

Information means information about an individual, and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or other claims information; the social security number, employer identification number, or other individual identifier; address; phone number; medical information, including psychological or psychiatric information or lay information used in a medical determination; and information about marital and family relationships and other personal relationships.

Maintain means to establish, collect, use, or disseminate when used in connection with the term *record*; and, to have control over or responsibility for a system of records when used in connection with the term *system of records*.

Notification means communication to an individual whether he is a subject individual. (*Subject individual* is defined further on in this section.)

Program information means personal information and records collected and compiled by SSA in order to discharge its responsibilities under titles I, II, IV part A, X, XI, XIV, XVI and XVIII of the Act and parts B and C of the Federal Coal Mine Health and Safety Act.

Record means any item, collection, or grouping of information about an individual that is maintained by SSA including, but not limited to, information such as an individual's education, financial transactions, medical history, and criminal or employment his-

tory that contains the individual's name, or an identifying number, symbol, or any other means by which an individual can be identified. When used in this part, *record* means only a record which is in a system of records.

Routine use means the disclosure of a record outside SSA, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statutes other than the Freedom of Information Act, 5 U.S.C. 552. It does not include disclosures which the Privacy Act otherwise permits without the consent of the subject individual and without regard to whether they are compatible with the purpose for which the information is collected, such as disclosures to the Bureau of the Census, the General Accounting Office, or to Congress.

Social Security Administration (SSA) means (1) that Federal agency which has administrative responsibilities under titles, I, II, X, XI, XIV, XVI, and XVIII of the Act; and (2) units of State governments which make determinations under agreements made under sections 221 and 1633 of the Act.

Social Security program means any program or provision of law which SSA is responsible for administering, including the Freedom of Information Act and Privacy Act. This includes our responsibilities under parts B and C of the Federal Coal Mine Health and Safety Act.

Statistical record means a record maintained for statistical research or reporting purposes only and not maintained to make determinations about a particular subject individual.

Subject individual means the person to whom a record pertains.

System of records means a group of records under our control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. Papers maintained by individual Agency employees which are prepared, maintained, or discarded at the discretion of the employee and which are not subject

to the Federal Records Act, 44 U.S.C. 2901, are not part of a system of records; provided, that such personal papers are not used by the employee or the Agency to determine any rights, benefits, or privileges of individuals.

We and *our* mean the Social Security Administration.

Subpart B—The Privacy Act

§ 401.30 Privacy Act and other responsibilities.

(a) *Policy.* Our policy is to protect the privacy of individuals to the fullest extent possible while nonetheless permitting the exchange of records required to fulfill our administrative and program responsibilities, and responsibilities for disclosing records which the general public is entitled to have under the Freedom of Information Act, 5 U.S.C. 552, and 20 CFR part 402.

(b) *Maintenance of records.* We will maintain no record unless:

(1) It is relevant and necessary to accomplish an SSA function which is required to be accomplished by statute or Executive Order;

(2) We obtain the information in the record, as much as it is practicable, from the subject individual if we may use the record to determine an individual's rights, benefits or privileges under Federal programs;

(3) We inform the individual providing the record to us of the authority for our asking him or her to provide the record (including whether providing the record is mandatory or voluntary, the principal purpose for maintaining the record, the routine uses for the record, and what effect his or her refusal to provide the record may have on him or her). Further, the individual agrees to provide the record, if the individual is not required by statute or Executive Order to do so.

(c) *First Amendment rights.* We will keep no record which describes how an individual exercises rights guaranteed by the First Amendment unless we are expressly authorized:

(1) By statute,

(2) By the subject individual, or

(3) Unless pertinent to and within the scope of an authorized law enforcement activity.

(d) *Privacy Officer.* The Privacy Officer is an advisor to the Agency on all privacy policy and disclosure matters. The Privacy Officer coordinates the development and implementation of Agency privacy policies and related legal requirements to ensure Privacy Act compliance, and monitors the coordination, collection, maintenance, use and disclosure of personal information. The Privacy Officer also ensures the integration of privacy principles into information technology systems architecture and technical designs, and generally provides to Agency officials policy guidance and directives in carrying out the privacy and disclosure policy.

(e) *Senior Agency Official for Privacy.* The Senior Agency Official for Privacy assumes overall responsibility and accountability for ensuring the agency's implementation of information privacy protections as well as agency compliance with federal laws, regulations, and policies relating to the privacy of information, such as the Privacy Act. The compliance efforts also include reviewing information privacy procedures to ensure that they are comprehensive and up-to-date and, where additional or revised procedures may be called for, working with the relevant agency offices in the consideration, adoption, and implementation of such procedures. The official also ensures that agency employees and contractors receive appropriate training and education programs regarding the information privacy laws, regulations, policies and procedures governing the agency's handling of personal information. In addition to the compliance role, the official has a central policy-making role in the agency's development and evaluation of legislative, regulatory and other policy proposals which might implicate information privacy issues, including those relating to the collection, use, sharing, and disclosure of personal information.

(f) *Privacy Impact Assessment.* In our comprehensive Privacy Impact Assessment (PIA) review process, we incorporate the tenets of privacy law, SSA privacy regulations, and privacy policy directly into the development of certain Information Technology projects. Our review examines the risks and